

PUBLIC PROSECUTOR v. ONG AH KAU & ORS.

[A.Cr.J. (Syed Agil Barakbah J.) December 8, 1975]

[Alor Star — Criminal Appeal No. 89 of 1974]

Criminal Law and Procedure — Controlled food — Interstate movement of rice — Restriction — Removal of rice from State of Perlis without prior written permit — Seizure by authorities — Order of learned President allowing release of articles — Appeal against said decision — Criminal Procedure Code (Cap. 6), s. 407 — Lembaga Padi dan Beras Negara Act, 1971, ss. 22, 27(1) & 29 — Lembaga Padi dan Beras Negara (Restriction of Interstate Movement) Regulations, 1973, reg. 2.

Rice Control — Lembaga Padi dan Beras Negara Act, 1971 — Object of the Act — Control of rice and padi has to be strictly exercised to ensure sufficient supply to public and to prevent black-marketeering.

The respondents removed 85 bags of rice from the State of Perlis in a motor lorry without a prior written permit as required under regulation 2 of the Lembaga Padi dan Beras Negara (Restriction of Interstate Movement) Regulations, 1973. The said articles were seized at a roadblock at 16½ m.s. Kangar/Alor Star Road and the respondents were charged and convicted under section 27(1) of the Lembaga Padi dan Beras Negara Act, 1971. The learned President exercised his discretion under section 29(1) and ordered the release of the said articles. The learned Public Prosecutor appealed against the said decision.

Held: (1) in this case the learned President had not considered all the known facts and surrounding circumstances concerning the rice in exercising his discretion under section 29(1) of the Act. He should have taken into consideration the actual destination of the consignments, the *bona fide* buyer and the price agreed upon, and if necessary, hold an enquiry to ascertain them;

(2) in the circumstances the order of release should be quashed and the case be remitted to the learned President for the purpose of holding an enquiry under section 407 of the Criminal Procedure Code.

Cases referred to:-

- (1) *Sing Hoe Motor Co. Ltd. v. Public Prosecutor* [1968] 2 M.L.J. 54.
- (2) *Chung Khiaw Bank Ltd. v. Public Prosecutor* [1968] 2 M.L.J. 196.

CRIMINAL APPEAL.

Abdul Khalid bin Abdul Manaff (Deputy Public Prosecutor) for the appellant.

Mohamed Radzi bin Tan Sri Sheikh Ahmad for the respondents.

Syed Agil Barakbah J.: This is an appeal by the Public Prosecutor against the order of the learned President, Sessions Court, Alor Star, for the release of eighty-five bags of rice which were removed by the respondents from the State of Perlis in a motor lorry without a prior written permit as required under Regulation 2 of the Lembaga Padi dan Beras Negara (Restriction of Interstate Movement) Regulations, 1973. The motor lorry was stopped at a roadblock at the 16½ milestone Kangar/Alor Star road, Kubang Pasu District, in the State of Kedah at about 6.10 a.m. on November 4, 1974. The respondents pleaded guilty to the charge and were convicted under section 27(1) of the Lembaga Padi dan Beras Negara Act, No. 47 of 1971. Each of them was fined \$2,000 in default six months' imprisonment.

Three other cases are dealt with together in this appeal as the facts are similar, the offences were committed at the same time and place and involves the same question of law relating to the power of the

A court under section 29(1) of the Act. The section provides:—

"(1) Where any person is convicted of an offence under this Act or under any regulation made thereunder the court may order the confiscation in whole or in part of:

- (a) any padi or rice in respect of which the offence has been committed which has been seized by, or has otherwise come into the possession of the Director General or any authorised officer or police officer or any vehicle, vessel or other article, the property of the accused, by means of which such offence has been committed or which is intended to be used for the commission of an offence under this Act or under any regulation made thereunder; or
- (b) the proceeds of sale of any such padi or rice if it has been sold under section 22."

C In his grounds of judgment the learned president construed the provision correctly that the power of the court to order confiscation of the rice is not mandatory but discretionary. Apart from the word "may" appearing in the section, section 22 which empowers the Director-General to order the sale of such rice which is liable to deteriorate and to keep the proceeds of the sale until the conclusion of criminal proceedings, also provides "except where the court orders confiscation of such proceeds under section 29, shall be disposed of in such manner as the court may order." The sub-section means that in respect of padi or rice seized on the ground that an offence under the Act has been committed, the court has discretionary power to order confiscation in whole or in part even though the seized article is not the property of the accused. On the other hand, in regard to any vehicle, vessel or other article by which means such offence has been committed or intended to be committed, the discretionary power to order confiscation can be invoked only when the vehicle, etc. is the property of the accused.

F The learned president in exercising his discretion for the release of the articles, took into consideration the following:—

- (1) the respondents are the drivers and attendants of the lorries;
- (p) the owners of the lorries were engaged by farmers in Perlis to whom the consignment of rice belongs;
- (3) the price of rice is much higher outside the State of Perlis;
- (4) the respondents were ignorant of the law restricting movement without permit;
- (5) they travelled along the main road without any attempt to conceal the consignment.

H In his grounds of judgment he said the offence being purely technical any order for the confiscation would cause great hardship on the farmers who were merely trying to get a good return for their income. He further said that if it was shown the rice was bought by a company, for example, the owners of the lorries, then perhaps he might consider forfeiture as it would then appear that exploitation is being practised by big-time businessmen on the rice market.

I In my considered judgment the learned president has not considered all the known facts and surrounding circumstances concerning the rice in exercising his discretion under the section. It is necessary to take into consideration the actual destination of the con-

signments, the *bona fide* buyer or buyers who have agreed to buy them and the price agreed upon. This is of vital importance because the Act does not only control movements of rice and padi from one State to another, but also prohibits unlawful possession and concealment. The object of the Act is clear beyond doubt that control of rice and padi has to be strictly exercised in order to ensure not only sufficient supply to the public, but also to prevent black-marketeering. If strict control is not exercised, there is every likelihood of concealment and disappearance of such vital commodity from the open market. In the circumstances it is also pertinent to enquire what is the higher price expected by the farmers to ensure that the rice is not being sold higher than the maximum prices fixed by the authority and that it does not fall into the wrong hands. This is so because only *bona fide* dealers duly licensed by the authority under the law can deal in rice. The learned president should have considered all these surrounding facts and, if necessary, hold an enquiry to ascertain them. This is particularly so where facts which ought to be known cannot be obtained without an enquiry being held. The discretion to hold the enquiry depends on the facts and circumstances of each particular case. In the present case, I am of the opinion that such enquiry should be held.

A similar procedure has been held to be necessary by Raja Azlan Shah J. (as he then was) in *Sing Hoe Motor Co. Ltd. v. Public Prosecutor*.⁽¹⁾ That case relates to the interpretation of section 92(4) of the Road Traffic Ordinance which enacts that —

“...an order for the forfeiture of such vehicle may be made if it is proved to the satisfaction of the court that an offence against this section has been committed...”

It was held the word “may” in section 92(4) of the Ordinance vested a discretion in the court whether or not to order a forfeiture. In order to exercise such a discretion properly, the known circumstances with regard to the particular vehicle should be fully considered. That implies an inquiry as to the true character of the motor vehicle concerned, whether it is the subject of a hire-purchase agreement or otherwise.

A similar question was submitted by way of reference to the Federal Court in *Chung Khiaw Bank Ltd. v. Public Prosecutor*.⁽²⁾ It was held, *inter alia*, that the court should hold an enquiry under section 407(ii) of the Criminal Procedure Code (Cap. 6) and at such enquiry the true legal owner of the vehicle has a right to be heard.

In the present case, although the owners are known, other relevant facts as stated above have to be ascertained before the learned president can be in a position to order confiscation or release of the rice.

In the circumstances I have no alternative but to quash the order of release and remit these cases to the learned president for the purpose of holding an enquiry under section 407 of the Criminal Procedure Code which in turn gives a discretion to the court to order disposal of any property for which any offence appears to have been committed and produced before it, during or at the conclusion of any enquiry or trial.

Order of release quashed.

A SANTOKH SINGH v. KOH TUNG CHIN

[O.C.J. (Mohamed Zahir J.) December 11, 1975]
[Seremban — Civil Suit No. 170 of 1971]

Contract — Brokerage commission — Claim for — Terms of agreement regarding plaintiff's obligation, inter alia, to effect lease for a stipulated sum — Payment of brokerage commission to be made when defendant's land has been leased — Whether plaintiff can claim for brokerage commission when land leased for a lesser sum.

The plaintiff claimed against the defendant for payment of brokerage commission in the sum of \$9,000. The plaintiff alleged that the defendant had agreed to pay him if he brought the parties together, namely BP Malaysia Berhad and the defendant, and after they had agreed to effect a lease of the defendant's land for \$60,000. The defendant denied that he had ever given an option to the plaintiff.

Held, dismissing the plaintiff's claim with costs: (1) on the balance of probabilities the defendant's version was true and there was no privity of contract between the parties;

(2) even if the plaintiff's version were accepted at the time when the contract was made, both parties had agreed that the contract for payment of the commission of \$9,000 was on the executed consideration of the plaintiff having procured the agreement of BP Malaysia Berhad that the defendant would be paid \$60,000 on the lease. However, this turned out not to be the case as the defendant, a week later, had to enter into an option for a lesser amount.

Cases referred to:-

- (1) *China Insurance Co. Ltd. v. Ngau Ah Kau* [1972] 1 M.L.J. 52.
- (2) *Abdulla Ahmad v. Animendra Kissen* A.I.R. 1950 S.C. 15.

CIVIL SUIT.

Atma Singh Gill for the plaintiff.

N. Ramachandran for the defendant.

Mohamed Zahir J.: The plaintiff sued the defendant for payment of brokerage commission in the sum of \$9,000. The plaintiff alleged that the defendant had agreed to pay him this sum on an agreement dated July 29, 1966 (Exhibit P1) signed by the parties arising from a land transaction. It was alleged by the plaintiff that he had managed to obtain a lease from BP Malaysia Berhad for the defendant's land held under Entry in the Mukim Register 35 Lot 364, Mukim of Jelei, Bahau consisting of 2 acres 1 rood 00 pole out of which a fixed brokerage commission was promised to the plaintiff by the defendant.

The plaintiff further alleged that his obligation under the agreement was merely to bring the parties together, namely BP Malaysia Berhad and the defendant, and after they had agreed to effect a lease on a portion of the defendant's land for a petrol station for a consideration of \$60,000 his (the plaintiff's) obligation was completed. Thereafter he was not supposed to do anything else. According to the plaintiff he came to know about the defendant's land through the defendant's brother (DW3) and after all arrangements had been agreed to lease the land to BP Malaysia Berhad he was introduced to the defendant and as a result the defendant signed the agreement (Exhibit P1), which the plaintiff termed as an option, at a coffee shop in Bahau. He further said that it was the defendant who prepared and produced Exhibit P1. The plaintiff further stated that at first the lease was negotiated for \$70,000 but later was reduced to \$60,000 and as a result the commission was accordingly re-